

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No. 3764 of 2011

DATE OF DECISION : 20.11.2017

ICICI Lombard General Insurance Co.

.... APPELLANT

Versus

Ramesh Kumar and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. R.M. Suri, Advocate,
for the appellant.

Mr. Adit Kumar Sharma, Advocate, for
Mr. R.D. Yadav, Advocate,
for respondent No.7.

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AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed by the Insurance Company challenging the award dated 27.02.2010 passed by the Motor Accident Claims Tribunal, Rewari (for short. `the Tribunal').

The only issue raised in the present appeal by the Insurance Company is that since the Crane bearing registration No. HR-47-A/7656 (for short, `the offending vehicle') was not having a permit, therefore, the Insurance Company was not liable.

In the present case, in a motor vehicular accident that occurred on 26.08.2008, involving Crane bearing registration No. HR-47-A/7656, Umrawali lost her life. The legal heirs of the deceased filed a claim petition under Section 166 of the Motor Vehicles Act, 1988 (for short, `the Act').

The Tribunal awarded a sum of ₹ 3,70,000/- along with interest at the rate of 6% per annum.

Learned counsel for the Insurance Company has argued that since crane (offending vehicle) was not having permit, therefore, the Insurance Company was not liable to pay the compensation. In the alternative, he argued that recovery rights should have been awarded to the Insurance Company as there was violation of conditions of policy.

The contention raised by learned counsel for the appellant is basically raising a defence available in favour of the insurer under Section 149 (2) of the Act. If the Insurance Company succeeds in this defence, either it is exonerated from the liability or recovery right is granted in favour of the insurer against the insured.

The Hon'ble Apex Court in **India National Insurance Company Limited v. Chella Bharathamma and others, Vol. CXXXIX (2005-1) PLR 102**, while considering the provisions of Sections 149 (2) and 66 of the Act and judgments of the Court in **New India Assurance Company Limited v. Asha Rani, (2003-1)133 P.L.R.1(S.C.)** and **National Insurance Company Limited v Nicolleeta Rohtagi, (2002-3)132 P.L.R. 621 (S.C)**, held as under :-

“12. High Court was of the view that since there was no permit, the question of violation of any condition thereof does not arise. The view is clearly fallacious. A person without permit to ply a vehicle cannot be placed at a better pedestal vis-a-vis one who has a permit, but has violated any condition thereof. Plying of a vehicle without

a permit is an infraction. Therefore, in terms of Section 149(2) defence is available to the insurer on that aspect. The acceptability of the stand is a matter of adjudication. The question of policy being operative had no relevance for the issue regarding liability of insurer. High Court was, therefore, not justified in holding the insurer liable.”

In the aforesaid decision, it was held that plying of a vehicle without a permit is an infraction.

In the present case, before adjudicating the issue raised by learned counsel for the Insurance Company, it would be appropriate to consider the elementary question :

“Whether Crane needed a permit ?”

Thereafter, the application of Section 66 of the Act would follow. Section 66 of the Act is re-produced below :-

“66. Necessity for permits – (1) No owner of a motor vehicle shall use or permit the use of the vehicle as a transport vehicle in any public place whether or not such vehicle is actually carrying any passengers or goods save in accordance with the conditions of a permit granted or countersigned by a Regional or State Transport Authority or any prescribed authority authorising him the use of the vehicle in that place in the manner in which the vehicle is being used :

Provided that a stage carriage permit shall,

subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a contract carriage:

Provided further that a stage carriage permit may, subject to any conditions that may be specified in the permit, authorise the use of the vehicle as a good carriage either when carrying passengers or not :

Provided also that a goods carriage permit shall, subject to any conditions that may be specified in the permit, authorise the holder to use the 90 vehicle for the carriage of goods for or in connection with a trade or business carried on by him.

(2) The holder of a goods carriage permit may use the vehicle, for drawing of any trailer or semi-trailer not owned by him, subject to such conditions as may be prescribed:

Provided that the holder of a permit of any articulated vehicle may use the prime-mover of that articulated vehicle for any other semi-trailer.

(3) The provisions of sub-section (1) shall not apply -

(a) to any transport vehicle owned by the Central Government or a State Government and used for Government purposes unconnected with any commercial enterprise;

to any transport vehicle owned by a local authority or by a person acting under contract with a local authority and used solely for road cleansing, road watering or conservancy purposes;

(b) to any transport vehicle used solely for police, fire brigade or ambulance purposes;

(c) to any transport vehicle used solely for the conveyance of corpses and the mourners accompanying the corpses;

(d) to any transport vehicle used for towing a disabled vehicle or for removing goods from a disabled vehicle to a place of safety;

(e) to any transport vehicle used for any other public purposes as may be prescribed by the State Government in this behalf;

(f) to any transport vehicle used by a person who manufactures or deals in motor vehicles or builds bodies for attachment to chassis, solely for such purposes and in accordance with such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(i) to any goods vehicle, the gross vehicle weight of which does not exceed 3,000 kilograms;

(j) subject to such conditions as the Central Government may, by notification in the Official Gazette, specify, to any transport vehicle purchased in one State and proceeding to a place, situated in that State or in any other State, without carrying any passenger or goods;

(k) to any transport vehicle which has been temporarily registered under section 43 while proceeding empty to any place for the purpose of registration of the vehicle;

(l) to any transport vehicle which, owing to

flood, earthquake or any other natural calamity, obstruction on road, or unforeseen circumstances, is required to be diverted through any other route, whether within or outside the State, with a view to enabling it to reach its destination;

(m) to any transport vehicle used for such purposes as the Central or State Government may, by order, specify;

(n) to any transport vehicle which is subject to a hire-purchase, lease hypothecation agreement and which owing to the default of the owner has been taken possession of by or on behalf of, the person with whom the owner has entered into such agreement, to enable such motor vehicle to reach its destination; or

(o) to any transport vehicle while proceeding empty to any place for purpose of repair;

(4) Subject to the provisions of sub-section (3), sub-section (1) shall, if the State Government by rule made under section 96 so prescribes, apply to any motor vehicle adapted to carry more than nine persons excluding the driver.”

From the perusal of Section 66 of the Act, it is apparent that an owner would comply with the conditions of permit granted by the transport authority before allowing the use of a transport vehicle.

The other aspect to be considered for deciding the issue involved is :

“Whether Crane is a transport vehicle or not?”

Rule 2 (ca) of the Central Motor Vehicles Rules, 1989 (for short, 'the Rules of 1989'), is re-produced as under :-

“2 (ca) "construction equipment vehicle" means rubber tyred (including pneumatic tyred), rubber padded or steel drum wheel mounted, self-propelled, excavator, loader, backhoe, compactor roller, dumper, motor grader, mobile crane, dozer, fork lift truck, self-loading concrete mixer or any other construction equipment vehicle or combination thereof designed for off-highway operations in mining, industrial undertaking, irrigation and general construction but modified and manufactured with "on or off" or "on and off" highway capabilities.

Explanation. - A construction equipment vehicle shall be a non-transport vehicle the driving on the road of which is incidental to the main off-highway function and for a short duration at a speed not exceeding 50 kms per hour, but such vehicle does not include other purely off-highway construction equipment vehicle designed and adopted for use in any enclosed premises, factory or mine other than road network, not equipped to travel on public roads on their own power.”

Rule 2 (ca) of the Rules of 1989 defines 'construction equipment vehicle'. In the said definition, mobile crane finds due mention. The explanation to the definition clarifies the entire situation by explaining that a construction equipment vehicle shall not be a transport vehicle, while being driven on the road.

From a bare reading of the above said two provisions, it is evident that Crane is a construction equipment and does not fall in ambit of 'transport vehicles'. In such circumstances, Section 66 of the Act has no application.

In view of above, it is not necessitated to adjudicate upon the issue regarding defence available to the Insurance Company under Section 149 of the Act that there was a violation of the insurance policy conditions. This issue will not arise in the present case for the reasons recorded above. In such circumstances, no fault can be found in the award passed by the Tribunal. The Insurance Company cannot be given recovery rights.

Appeal is, accordingly, dismissed.

November 20, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes